

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

NORTH AMERICAN SPECIALTY)
INSURANCE COMPANY, a New Hampshire)
corporation,)
Plaintiff,)
v.) Case No. CIV-04-1691-L
ESTATE OF RICHARD ALLEN FISHER, an)
Oklahoma citizen, Personal Representative)
Unknown;)
et al.,)
Defendants.)

ORDER

This is a declaratory judgment action brought to determine the duties and obligations of plaintiff North American Specialty Insurance Company with respect to a policy of insurance, Policy Number BZ10003236-01, issued to defendants Aviation Flight Specialists, L.L.C. and Michael H. Wright as named insureds. The subject of the action involves two separate aviation accidents, the first on May 1, 2004 and the second on August 3, 2004, involving the same aircraft, a Piper 601P Aerostar, N601BV, which was owned by Aviation Flight Specialists, L.L.C., and piloted by defendant Richard Allen Fisher during both accidents. The accident of August 3, 2004 occurred in or near Austin, Texas, and caused fatal injuries to Richard Allen Fisher, Jason Jones and the Treadwell family of

Edmond, Oklahoma. The August 3, 2004 accident also caused extensive damage to the residence of Lawrence and Jacqueline Elliot of Austin, Texas.

This matter is before the court on plaintiff North American Specialty Insurance Company's Motion for Default Judgment Against Aviation Flight Specialists, L.L.C. [**Doc. No. 46**] and Motion for Default Judgment against the Estate of Richard Allen Fisher [**Doc. No. 47**], brought pursuant to Fed. R. Civ. P. 55. The court file reflects that no other party has filed a written objection to either of these motions. The court has reviewed the motions and the entire case file in this matter and finds that the motions should be denied.

As noted in the Clerk's Entry of Default entered as to each of these defendants on August 19, 2005, the defendants, Aviation Flight Specialists, L.L.C. and the Estate of Richard Allen Fisher, were validly served with complaint and summons and the legal time for pleading or otherwise defending has expired and the defendants have failed to plead or otherwise defend. No appearance has been made by either of these two defendants, nor has any motion or pleading been filed on either defendant's behalf.

While it is undisputed that defendant Aviation Flight Specialists, L.L.C. and the Estate of Richard Allen Fisher are in default, the court finds that it would not be appropriate to enter a default judgment against these two defendants at this time. Plaintiff brought this declaratory judgment action seeking a determination by the court that there is no coverage or indemnity under the subject policy for the

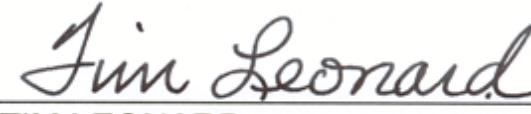
accident of May 1, 2004 and that there is no duty to defend the insureds, and no coverage or indemnity under the subject policy for the accident of August 3, 2004. However, the non-defaulting defendants have appeared in the matter and do contest plaintiff's allegations that there is no coverage or indemnity for either of the accidents. As indicated by the Joint Status Report and the discussion of counsel at the July 6, 2005 status conference held in this matter, several significant legal issues remain as to the issue of coverage under the subject policy of insurance. The entry of a declaratory default judgment on the coverage issues in this multi-defendant case would not be appropriate. See Northland Insurance Company v. Cailu Title Corporation, 204 F.R.D 327, 330 (W.D. Mich. 2000) (entry of declaratory judgment against defaulting defendants improper because non-defaulting parties remain entitled to contest allegations of complaint).

Therefore, under the circumstances, the court finds that while it is proper to note the Entry of Default as to defendants Aviation Flight Specialists, L.L.C. and the Estate of Richard Allen Fisher, judgment against the defaulting defendants should await the court's final judgment on the merits in this declaratory judgment action.

Accordingly, plaintiff North American Specialty Insurance Company's (1) Motion for Default Judgment Against Aviation Flight Specialists, L.L.C. [Doc. No. 46] and (2) Motion for Default Judgment against the Estate of Richard Allen

Fisher [Doc. No. 47] are DENIED at this time, for the reasons stated above.

It is so ordered this 1st day of September, 2005.


TIM LEONARD
United States District Judge